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# Contents

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## Abstract

With the Eastern Enlargement successfully completed, the EU is searching for a proper balance between internal security and external stabilisation that is acceptable to all sides. This paper focuses on an EU foreign policy instrument that is a case in point for this struggle: EC visa facilitation and readmission agreements. By looking at the EU's strategy on visa facilitation and readmission, this paper aims to offer a first systematic analysis of the objectives, substance and political implications of these agreements as a means to implement a new EU security approach in the neighbourhood. In offering more relaxed travel conditions in exchange for the signing of an EC readmission agreement and reforming domestic justice and home affairs, the EU has found a new way to press for reforms in neighbouring countries while addressing a major source of discontent in these countries. The analysis concludes with the broader implications of these agreements and argues that even if the facilitated travel opportunities are beneficial for the citizens of the target countries, the positive achievements are undermined by the Schengen enlargement, which makes the new member states tie up their borders to those of their neighbours.

# 1. Introduction

In recent years, the EU has assumed a greater role in dealing with security concerns within the EU. In response to nation states' decreasing capabilities to deal effectively with problems at the national level, domestic policy fields such as asylum and migration have been at least partially transferred to supranational responsibility (Scharpf, 2003; Zürn, 2000). One of the issues that receives increasing attention at the supranational level is irregular migration. Every year, an estimated 30 million people cross an international border irregularly, of which, according to Europol, between 400,000 and 500,000 enter the EU. The stock of irregular residents in the EU is currently estimated to be around three million (Council of Europe, 2003). In recent years, EU members have come to the conclusion that they are no longer able to properly react to the phenomenon of irregular migration on the domestic level and instead need to combine their efforts regarding return policies on the European level. Measures against irregular immigration thus became a focal point in the EU's efforts to establish an 'area of freedom, security and justice'.

At the same time, the EU's role in the outside world has changed. With the Eastern enlargement, new regions and countries became neighbours of the EU. New frameworks of cooperation, such as the Stabilisation and Association Process (SAP) and the European Neighbourhood Policy (ENP) were set in motion to closely affiliate neighbouring states with the EU (Emerson, 2005; Emerson & Noutcheva, 2005; Emerson et al., 2007; Landaburu, 2006; Tassinari, 2006). The EU tried to assume a greater responsibility in the stabilisation of the neighbourhood and sought to "promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations" (European Security Strategy, 2003, p. 8). A major challenge in the EU's efforts to stabilise the neighbourhood was to find a proper balance with the internal security concerns. Whereas the EU's foreign and security policy was interested in advancing regional integration and good neighbourly relations, the EU justice and home affairs ministers were primarily guided by their interest in keeping problems out and the external border closed.

This paper is concerned with an EU foreign policy instrument that is a case in point for this struggle: EC visa facilitation and readmission agreements. These agreements aim at fostering good neighbourly relations by easing the tight visa regime with neighbouring countries in order to externalise a restrictive migration policy. By elaborating on the EU's strategy on visa facilitation and readmission, this paper aims at offering a first systematic analysis of the objective, substance, and political implications of these agreements. When was the link between visa facilitation and readmission made? What are the target countries, and what do these agreements imply for these countries?

In the following, we start with an elaboration of the problems inherent in the EU's efforts to establish a strong external border control while seeking to stabilise the neighbourhood. The argument this paper advances is that the shifting of the EU's border policies to the Central and Eastern European countries has created a need for a new EU security approach in the neighbourhood. This approach is defined as the explicit attempt of the EU to balance internal security concerns and external stabilisation needs. In offering more relaxed travel conditions in exchange for the signing of an EC readmission agreement and reforming domestic justice and home

affairs, the EU found a new way to press for reforms in neighbouring countries, while meeting a major source of discontent in these countries. Part 3 introduces the instrument of an EC readmission agreement, looks back over when the connection to visa facilitation was made and presents the importance of EC visa facilitation and readmission agreements in the relations with the Western Balkan countries on the one hand, and the European Neighbourhood Policy on the other. Since the Western Balkan countries have the prospect of joining the EU one day, they are not subsumed under the European Neighbourhood Policy but under a specific regional pre-accession strategy. Part 4 analyses the differences and similarities between the various visa and readmission agreements. EC visa facilitation and readmission agreements were so far concluded with the Western Balkan countries, Ukraine, Moldova and the Russian Federation and may become a standard foreign policy instrument in the context of the European Neighbourhood Policy. The analysis concludes with the broader implications of these agreements and argues that even if facilitated travel opportunities are beneficial for the citizens of the target countries, the positive achievements are undermined by the Schengen enlargement, which makes the new member states tie up their borders to those of their neighbours.

# 2. Controlling EU frontiers while stabilising the neighbourhood: conflicting objectives?

Since the Amsterdam Treaty, the EU has worked on the establishment of a common "area of freedom, security and justice". Political actors have developed a common understanding of security threats based on the idea that a safe inside should be most effectively protected from an unsafe outside (Monar, 2001a). Accordingly, a strong and effective control of external frontiers became a crucial objective of EU cooperation in justice and home affairs. At the same time, with the Central and Eastern European countries becoming new EU member states, the stabilisation of the neighbourhood gained in importance. With a particular focus on the role of visa and readmission policies, the following section discusses the problems arising from the EU's efforts to establish a strong and effective external border control while seeking to stabilise the neighbourhood.

## 2.1 The birth of the European area of freedom, security and justice

The Treaty of Amsterdam first introduced the idea of establishing a "European area of freedom, security and justice": barriers to the free movement of people across borders should be minimised, the EU's internal security enhanced, and the human rights of all EU citizens respected. On the basis of the Amsterdam Treaty, the EU's cooperation in justice and home affairs took on an entirely new quality and developed a substantial growth dynamic. The domain turned into a major field of EU policy making. EU action in justice and home affairs was no longer seen as complementary to the functioning of the single European market, but rather as a means to realise the ambitious project of an area of freedom, security and justice. The EU was to create an "internal security regime" (Anderson & Apap, 2002, p. 4) consisting of three main pillars:

1) the creation of a common territory without internal borders along with the setting-up of a common external border policy;

2) the strengthening of international police cooperation, particularly in (internal) cross-border regions (regulations of cross-border pursuit, joint police stations, joint patrolling in cross-border areas, etc.);

3) and finally, the pooling of police data and information among national law enforcement bodies (Schengen Information System – SIS; Costumes Information Service – CIS, Europol's computerised system of collected information, Eurodac) (Anderson & Apap, 2002, p. 4; Apap et al., 2004, p. 9).

But what were the dynamics underlying the creation of an area of freedom, security and justice?

In his widely cited article 'The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs', Jörg Monar (2001a) explained the rapid development and expansion of co-operation in justice and home affairs on the basis of two sets of factors; firstly: "'laboratories' which have helped to pave the way for the extraordinary development during the last decade and [secondly] 'driving factors' which have been triggering developments and further expansion of EU action" (Monar, 2001a, p. 748). The Council of Europe, Trevi and Schengen were identified as the major laboratories.[1] Transnational challenges, spillover-effects from economic integration, the interest of certain member states to 'Europeanise' their national problems and the dynamic created by the launching of the project of an 'area of freedom, security' were listed as the major driving forces.

Other scholars argued that the dynamic growth cannot be understood without focusing on the changing conceptions of security and its implications for EU cooperation in justice and home affairs (Anderson & Apap, 2002; Bigo & Guild, 2005a; Huysmans, 2000). Since the 1980s co-operation in various security issues has led to close interaction between national interior ministers and their officials. These political actors promoted their action in very different policy areas, such as terrorism, organised crime, trans-border crime, irregular immigration, asylum seekers and minority ethnic groups, as different elements to deal with one general security threat. As a matter of fact, different groups of people and problems were categorised "too quickly and too emphatically" (Anderson & Apap, 2002, p. 1) as security threats. This categorisation of various phenomena as security threats concerned first and foremost migrants and asylum seekers. Migration was increasingly described as a danger to domestic security, representing a threat. In this way, migration has been converted into a law-and-order question and became "securitized" (Huysmans, 2000; Vink, 2002).

However, not all migrants were categorised as a threat: migrants from within Europe, more specifically from within the EU, were excluded from the political discourse. While the free movement of persons within the EU was actually fostered, the discursive logic drew a clear distinction between EU-nationals and non-EU-nationals. The EU-space was presented as the "safe(r) inside" and contrasted with the "unsafe(r) outside" (Monar, 2001a, p. 762). The EU's frontiers were increasingly established as the dividing line between inside and outside, and "law enforcement and border controls [became] key instruments to maintain and further enhance the distinction" (Ibid). The control of the external frontiers became the one major objective of EU cooperation in

[1] Between 1975 until 1993, Trevi (Abbreviation for the French words 'Terrorisme, Radicalisme, Extremisme et Violence Internationale') provided EC member states with a framework to fight terrorism. Trevi was only a loose form of intergovernmental cooperation, as it had no permanent institution and lacked legal instruments. Its mandate, however, was gradually expanded and eventually covered also other areas such as the fight against drug trafficking and organised crime.

justice and home affairs. These discursive narratives of the relation between frontier and controls are now widely accepted in the EU but have also met strong criticism in that they artificially construct "frontiers" and create the myth that the effective control of these frontiers would be the solution of "immigration control" (Bigo, 2005).

## 2.2 Extending the EU's border control policies to the East: implications for inside and outside countries

In the Amsterdam Treaty the EU15 took a major decision with regard to justice and home affairs and the EU's external relations. Due to security concerns in the Central and Eastern European countries, the EU15 decided to include the Schengen regulations and rules – "an uncatalogued miscellany of decisions and agreed working practices, a sort of disjointed incrementalism par excellence" (Lavenex & Wallace, 2005, p. 465) – into the EU's *acquis communautaire* to be incorporated in the legal order of the countries seeking accession. Article 8 of the Schengen Protocol annexed to the Amsterdam Treaty states that the "[S]chengen *acquis* and further measures taken by the institutions within its scope […] must be accepted in full by all States candidates for admission." Opt-outs like those of the UK and Ireland were no longer permissible for new member states. This decision was based on the dual motivation

> to bring the applicant border policies progressively in line with the Schengen *acquis* and also to address immediate EU concerns about threats perceived by its member states. The most evident and pervasive of these concerns is the potential for illegal immigration by east Europeans or third-country nationals travelling through the applicant countries (Grabbe, 2000, p. 9).

The definition of the Schengen regulations as part of the acquis meant for the candidate states in Central and Eastern Europe that a sizeable and complex body of laws and practice must be implemented upon accession. The candidate states found themselves under strong pressure to upgrade their external border control regimes to the high legal, organisational and technical standards outlined in the Schengen acquis. The adaptation process involved substantial financial and administrative efforts (House of Lords, 2000; Monar, 2001b).

What is more, the new drawing of the EU's external border had a profound impact on the relations between the enlarged EU and the non-EU parts of Europe. Fears were voiced that the transfer of rigid border control policies would reinforce barriers between countries that traditionally had close relations, such as Poland and Ukraine. A particular concern was the transfer of the EU's visa regime to the accession countries. The candidate countries needed to adopt the EU's visa regime in full and were therefore required to impose visas on citizens of neighbouring countries in case those states were listed on the EU's negative visa list. This conditionality requirement was particularly difficult as many applicant states had minorities on the other side of the border (for instance, the Hungarian minority in Serbia). Moreover, after the fall of the Berlin Wall, the governments of the Central European states had pursued an open borders policy as an important element to maintain good relationships with neighbouring countries. Sustained by Western European states as part of regional and bilateral integration, these countries have built up intense relations across borders and allowed citizens of countries such as Russia, Ukraine or Belarus to travel easily to Central and Eastern Europe.

> The open-borders policy has affected thousands of ordinary citizens on both sides of the border, and has significantly contributed to efforts to

> overcome the historical legacy of mutual prejudice, stereotypes and resentments. […] Open borders have also fostered contacts of national minorities, such as the Belarusians in Poland or the Hungarians in Ukraine (Trans-Carpatia), Yugoslavia (Vojvodina) and Romania, with their mother countries (Apap et al., 2001, pp. 2-3).

The EU enlargement process led to the end of the liberalised movement of persons in the region. The accession process made the Central and Eastern European countries demand new visa requirements for third countries being located on the EU's negative visa list, including all Western Balkan states (with the exception of Croatia), Russia, Ukraine and other CIS countries. This step seriously confined the possibilities of free movement for citizens of these states. The imposition of visa requirements was therefore likely to disrupt the socioeconomic and political relationships across border regions (see, inter alia, Grabbe, 2002, p. 91f; Monar, 2001b, p. 9f; Apap et al., 2001). Scholars observed an inherent tension between the EU's internal and external security policies in Central and Eastern Europe:

> The EU's external security concerns have caused it to encourage regional integration at all levels in eastern Europe, but at the same time its emerging internal security policies (contained in the newly integrated Schengen Convention, and justice and home affairs cooperation) are having contrary effects by reinforcing barriers between countries (Grabbe, 2000, p. 1).

In this view, the EU was not paying enough attention to the geo-political implications of enlargement.

The EU tried to minimise the negative side-effects of enlargement. In the European Security Strategy, the neighbouring countries moved to the centre of attention.

> It is not in our interest that enlargement should create new dividing lines in Europe. We need to extend the benefits of economic and political cooperation to our neighbours in the East while tackling political problems there. We should now take a stronger and more active interest in the problems of the Southern Caucasus, which will in due course also be a neighbouring region (European Security Strategy, 2003, p. 9).

In March 2003, a new framework of relations was proposed with the countries neighbouring the enlarged Union to the East and South. The objective was to "develop a zone of prosperity and a friendly neighbourhood – a 'ring of friends' – with whom the EU enjoys close, peaceful and co-operative relations" (Commission of the European Communities, 2003a, p. 4). On the one hand, the initiative was intended to associate the neighbouring states as closely as possible, on the other hand it made clear that full membership is not an option. The former President of the European Commission Romano Prodi phrased this principle as "sharing everything but institutions" (Prodi, 2002). The initiative is therefore the attempt to stabilise the European neighbourhood without the most successful foreign policy tool, i.e. the membership incentive (as a result, the Western Balkans and Turkey were excluded from the European Neighbourhood Policy as they still have the membership perspective). This time, the major incentive for cooperation should be the vision of an open and integrated market:

> Russia, the countries of the Western NIS and the Southern Mediterranean should be offered the prospect of a stake in the EU's Internal Market and further integration and liberalisation to promote the free movement of – persons, goods, services and capital (four freedoms) (Commission of the European Communities, 2003a, p. 4).

In brief, the European Neighbourhood Policy presents a major political project of the EU "with the aim to manage its new interdependence in an altered geopolitical context" (Lavenex, 2004, p. 680). This new interdependence concerns in particular "soft security" issues to be dealt with in justice and home affairs cooperation (for more details, see Wichmann, 2007). In this respect, the policies on visa and readmission were considered as particularly important elements – although for different reasons.

## 2.3 The relevance of visa and readmission policies in the neighbourhood

The EU considers its visa policies a chief means to select 'worthy' from 'unworthy' guests. Issuing visas occupies an important place in the EU's understanding of effective and comprehensive border management. For the EU, the first line of border control starts directly in third-countries, whereas the second line is the border itself. Visas therefore play an important role in what scholars called "policing at a distance" (Bigo & Guild, 2005b, p. 1). The Amsterdam Treaty transferred far-reaching competences in the visa domain to the European Community, which were then used to differentiate the world in four categories of citizens:[2] firstly, European Union citizens who have the right to move and reside freely within the territory of the European Union (limitations to this right are allowed only in a few cases); secondly, citizens of countries participating in the European Economic Area enjoying privileged relationships with the EU and having equivalent rights; thirdly, favoured third-countries, e.g. Israel, which are placed on the EU's 'positive' visa list of Council Regulation 539/2001 meaning that their nationals do not require a visa to enter the EU; and finally, third-countries that are placed on the 'negative' visa list of Council Regulation 539/2001 meaning that their citizens do require a visa to enter the EU (Bigo & Guild, 2005c, pp. 235-236; Council of the European Union, 2001a).

Citizens of countries placed on the negative visa list are considered by definition as potential security risks. Didier Bigo and Elspeth Guild point to the fact that the negative visa list, "if one applies the logic to its extreme, [is] a generalized form of the so-called 'rogue states'. It denotes suspicion, mistrust and fear about the nationals of that state" (Bigo & Guild, 2005c, p. 236). In Council Decision 539/2001, the EU has placed all countries subsumed under the current enlargement process and the European Neighbourhood Policy onto the list of countries whose citizens require a visa for the EU. The two exceptions were Israel and Croatia.

This decision was bound to have major implications. In the neighbouring countries being placed on the negative visa list, the picture was reinforced that the EU is establishing a 'fortress Europe'. The visa policies have negatively affected the image of the European Union in the neighbourhood. Obtaining a Schengen Visa is a relatively complicated and costly procedure for third-country citizens. Studies revealed that the current EU visa practices are perceived as intransparent, too expensive and troublesome in neighbouring countries (ICG, 2005; Boratynski et al., 2006a). Even the

[2] First aspects of the visa policies were already brought within the Community framework with the Maastricht Treaty, concretely, the determination of the third countries whose nationals must be in possession of visas when crossing the external borders of the member states, and the establishment of a standard model visa. The Amsterdam Treaty (1997) then broke ground for an expansion of the EU's visa policy. It was pooled in the newly introduced Title IV 'Visas, Asylum, Immigration and other Policies related to free movements of persons' and brought under the legal framework of the Community. In addition, the Schengen *acquis* was annexed to the treaty, so that harmonisation measures regarding visas upon which the Schengen members have agreed outside the Community now became part of the Union's legal framework.

European Commission noticed that "our existing visa policies and practices often impose real difficulties and obstacles to legitimate travel. Long queues in front of EU consulates are a highly visible sign of the barriers to entry into the Union" (Commission of the European Communities, 2006a, p. 5). Due to its geographical location, the negative implications of the visa regime were particularly visible in the Western Balkans. In this regional setting, the EU's visa regime has even caused an increasing European alienation effect. The International Crisis Groups assessed that the current visa regime was seen as "fostering resentment, inhibiting progress on trade, business, education and more open civil societies, and as a result contributing negatively to regional stability" (ICG, 2005, p. i).

In interviews for this analysis, European Commission officials also named a second reason why the current EU visa practices were increasingly put into question: they simply do not achieve the desired results. In the EU a consensus is emerging that irregular immigration and organised crime cannot be prevented through strict visa regulations. See, for instance, the statement of a European Commission official who critically assessed the current visa practices:

> There is a big misunderstanding in the EU. Visa policy has nothing to do with illegal migration or trafficking in human beings. It is like the link between prohibition and drinking beer. Once you forbid alcohol at all levels, all beer drinkers become criminals. If you are limiting or suppressing the possibilities for something that is basic, like beer drinking or going to Paris for a weekend, then people invent things to be nonetheless able to do it. And they will find a way. So the EU's visa policy is not helping a bit to reduce the number of criminals or economic illegal immigrants, because they are already there.[3]

For the EU, another instrument gained in importance that was considered more effective in terms of reducing irregular immigration: the signing of readmission agreements. An effective return policy to enforce control measures moved to the centre of member states' attention when the Schengen agreements shifted the focus from nation state borders to external borders. The European Commission, as well as governments of member states, argued on various occasions that the credibility and integrity of the legal EU immigration system would be in danger without an efficient common return policy (Commission of the European Communities, 2003b, p. 8).

Consequently, readmission agreements – a long-standing instrument of nation states to facilitate the return of irregular migrants and rejected asylum seekers – have increasingly been discussed as a Community instrument on the supranational level. After the Amsterdam Treaty had transferred the competence to negotiate and conclude readmission agreements with third countries to the European Union, the European Council had to adopt criteria for identifying third countries with which multilateral readmission agreements should be negotiated (Council of the European Union, 2002a). The following criteria were agreed:

- Nature and size of migratory flows toward the EU (migration pressure, number of persons awaiting return);
- Geographical position vis-à-vis the EU and regional balance;
- Need for capacity-building concerning migration management;

[3] Authors' interview with EU official, 4 May 2006.

- Existing framework for cooperation;
- Attitude towards cooperation on migration issues (Council of the European Union, 2002a, Council of the European Union, 2002c).

The EU's activism with regard to signing EC readmission agreements with neighbouring countries showed that the EU increasingly became aware of the insufficiency of domestic border controls if those are not backed up by cooperation with countries of origin and transit; this underscored the external dimension of JHA policies. We can generally distinguish two approaches to dealing with the external dimension of EU migration policy: the first approach seeks to externalise traditional tools of domestic or EU migration control to sending and transit countries, e.g. border control. The second approach is preventive in nature and strives towards eliminating the root causes of migration (Boswell, 2003). These two approaches differ fundamentally in their perception of how to deal with substantial numbers of immigrants and most likely affect the EU's relations with neighbouring countries in different ways. The first is a restrictive and control-oriented approach in which the EU passes classic migration control instruments on to non-member countries that have to accept provisions for facilitating the return of irregular migrants and rejected asylum seekers. The second approach seeks to abolish circumstances in the countries of origin that force people to migrate to the EU and builds on mutually beneficial forms of cooperation between the EU and third countries.

The European Union has repeatedly emphasised that it seeks to take both approaches into account. However, the more restrictive first approach – for which readmission agreements are a case in point – has dominated the debate at least since the beginning of the millennium. The framing of readmission policy has been of high significance for the EU's attitude towards countries of origin and transit. The top priority position that was increasingly given to the negotiations on EC readmission agreements with third countries illustrated the focus on restrictive policies of demarcation. When the EU realised the limited success in signing readmission agreements and accepted the link between readmission and visa facilitation, the restrictive approach was softened at least with regard to the neighbouring regions.

# 3. EC visa facilitation and readmission agreements: developing a new security approach

This section introduces the eventual coupling of the negotiations on EC readmission agreements to the incentive of visa facilitation. The instrument of EC visa facilitation and readmission agreements was considered to be beneficial to both sides: they provide the EU with a strong lever to make third countries sign readmission agreements and increase the reform efforts in their domestic justice and home affairs sector, while they also meet major grievances of the neighbouring countries by easing the tight visa regime and fostering facilitated travel opportunities for bona fide travellers. EC visa facilitation and readmission agreements gradually moved to the centre of a new EU security approach in the neighbourhood.

## 3.1 The instrument of EC readmission agreements with neighbouring states

### *3.1.1 What are EC readmission agreements?*

The EU's efforts to reach a high number of readmission agreements with all states around its territory, and even with more distant transit and origin countries, represents the attempt to create concentric circles of demarcation (Council of the European Union, 1998, Article 60). The concept of concentric circles of demarcation stands for extending the redistributive system for the examination of asylum claims to non-EU countries and expulsing irregular immigration to outside territories. Such a policy is intended to transfer responsibility to non-member countries. Whereas the original model included four circles (Council of the European Union, 1998, point 61), in the context of EC readmission agreements, the model of concentric circles was slightly modified to three circles of enforcement: the pre-embarkation checks are geographically the outermost circle and the Schengen border is the innermost. The network of readmission agreements then constitutes the middle circle.

After the Amsterdam Treaty transferred competences for readmission to the EU, member states decided to sign only those Community readmission agreements that provide for the return of not only citizens of contracting states but also third country nationals. Such an obligation to readmit third country nationals cannot be deduced from international law.[4] However, some advocates of readmission of foreign nationals refer to "the principle of neighbourliness and the responsibility of a state for those impairments to other states emanating from its territory" (Hailbronner, 1997, p. 31). They argue that the ideas of good neighbourhood and European solidarity imply that each state bears the responsibility for aliens who have transited its territory on their way to a neighbouring state.

What is basically missing in order to integrate the obligation to readmit third country nationals into customary international law is consistent state practice – and this is what EU member states are keen to see. By establishing a trend towards such an obligation and by including precise descriptions of material and procedural demands on transit countries into readmission agreements, the EU is seeking to transform international law. When a new norm is widely accepted, it will be integrated into customary international law.

Community readmission agreements are being signed on the basis of the principle of reciprocity, which means that all contracting states must be prepared to readmit not only their own citizens but even third country nationals on the same terms. However, in the case of readmission agreements between the EU on the one hand and non-EU member states on the other, the argument of reciprocity is hypocritical because those countries with which it is of interest for the EU to conclude agreements would not have any problems with expulsions to the EU.[5]

When EU actors increasingly became aware of the problems in negotiating readmission agreements with transit countries and of the problematic consequences that readmission agreements entail for them, EU documents began to frequently refer to the responsibility of each nation state to control its borders efficiently in order to justify its policy: "The objective of readmission is to make the Member States and third

[4] Council of the European Union (1999a) and Hailbronner (1997).

[5] The Council had already pointed to this kind of asymmetrical reciprocity much earlier (Council of the European Union, 1999b).

States take responsibility for the failings of their border control systems" (Council of the European Union, 2001b, p. 9).[6] It has also been said that readmission agreements function as stimuli for more stringent border controls in the transit country.

### *3.1.2 Actors in readmission*

By its very nature, readmission concerns three actors: the state that requests readmission, the state that is requested to readmit, and the person to be readmitted (either irregular migrant or rejected asylum seeker). Their interests are very different. While the first two actors decide upon the legal framework of readmission, the third one is its mere object. The returning state usually refers to the integrity of its asylum system or its migration control system and argues that the electorate is in favour of a restrictive control approach. Even though forced return is costly, the expense is considered to be lower than the long-term financial costs of not implementing it. The state requested to readmit may have economic, demographic or social interests in not readmitting its own citizens and even more so third country nationals.

The person to be readmitted is confronted with the choice between staying in irregularity or returning. If the individual is unwilling to return, the returning state might react by threatening and then also implementing forced removal.[7] Furthermore, the authorities of the country of origin or transit might display an uncooperative attitude by denying that the individual actually possesses their nationality, by not issuing the necessary travel documents, or by objecting to the modalities of return.

Readmission questions constitute a segment of those policy issues that, when the Treaty of Amsterdam took effect, became part of the *acquis* in the 1st pillar. The competence to conclude readmission agreements on behalf of EU member states was shifted to the European Community. The European Commission received the mandate by member states to negotiate readmission agreements with non-member countries on their behalf. However, not all of the EU members participate in readmission policy. Since Community readmission agreements are based upon the provision of Title IV of the Treaty Establishing the European Community (TEC), they are not applicable to the UK and Ireland unless these countries opt-in in the manner provided for by the Protocol to the TEC.[8] Likewise Community readmission agreements will not extend to Denmark by virtue of the Protocol on the position of Denmark.[9]

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[6] In a later version, the wording was slightly changed in a more positive way: "Readmission makes the Member States and the third States responsible for controlling their borders efficiently" (Council of the European Union, 2002d).

[7] On the more detailed legal implications of a state's right to expel individuals, see Noll (1999).

[8] Where one or both of the governments wants to take part in an initiative related to Title IV TEC, they may notify the president of the Council within three months. If a measure concerning Title IV TEC has been adopted by the Council and Britain and Ireland have not decided to opt-in, both countries can decide at any later time to accept that measure. With regard to Community readmission agreements, both countries generally tend to participate, but the decision is made on a case-by-case basis. The UK has decided to opt-in to all readmission agreements signed so far. In contrast, the Irish government voted against opting-in to the agreements with Albania and Macao.

[9] Article 1 of this protocol constitutes the Danish opt-out from all measures pursuant to Title IV TEC, and the provisions under Article 2 are the same as those used in the British and Irish cases. In contrast to the UK and Ireland, however, Denmark lacks the possibility of voluntary opt-in. The only exception is initiatives build upon the Schengen *acquis* under Title IV TEC. Here, Denmark can decide to opt-in within six months. But since readmission agreements have been handled as an external matter rather than being Schengen-related Denmark has no possibility to opt-in. As a result, some Community readmission agreements entail a joint declaration on Denmark in which the country expresses its desire to conclude a bilateral readmission agreement with the country at hand in the same terms as the Community agreement.

In September 2000, the Commission received the first mandates for negotiations with Morocco, Sri Lanka, Russia, and Pakistan; in May 2001 with Hong Kong and Macao; in June 2002 with Ukraine; and in November 2002 with Albania, Algeria, Turkey, and China (Council of the European Union, 2002a). The very detailed mandate was prepared by the Expulsion Working Party, rests upon a draft model readmission agreement, and does not leave much flexibility to the Commission.

## 3.2 Change of mandate in the course of negotiations on EC readmission: including visa facilitation

In 2002, member states started to call for the speeding-up of ongoing readmission negotiations – a claim, which has been ever since reiterated at every opportunity.[10] At the end of the year, the Commission conceded that negotiations on readmission agreements had not led to quick results.[11] In the following months, the Commission repeatedly asked the Council to think about incentives, e.g. more generous visa policies, or increased quotas for migrant workers, that might help to obtain the cooperation of third countries in the negotiation and conclusion of readmission agreements. In that, the Commission implicitly addressed criticism from various governments of member states, which had complained repeatedly about too little progress in negotiations and had sought to put pressure on the Commission to come up with more results. Alongside the difficulties in readmission negotiations, at least standard readmission clauses had been approved in 1999 as mandatory elements for inclusion in all future association and cooperation agreements by the EC.

Ongoing difficulties in negotiating readmission agreements forced the governments of EU member states to consider how to expand the Commission's margin during negotiations. Gradually it became clear that concessions had to be made and more attractive packages would have to be linked to the policy field of migration. In the months that followed, visa facilitation became the major compensation matter introduced by third countries in negotiations with the EU. Besides the very special cases of Hong Kong and Macao, the most successful link between readmission and visas has been made by the Russian Federation. In July 2004, the Council authorised the Commission to negotiate not only on readmission but even on visa facilitation (Commission of the European Communities, 2004, p. 12). Shortly afterwards, the link between readmission and visa facilitation became official for Ukraine, too. Even China officially asked the Community, in May 2004, to negotiate on visa facilitation in parallel with negotiations on readmission.[12] In the multi-annual programme on strengthening freedom, security, and justice (the so-called Hague Programme), member states finally referred to the Commission's call and agreed to further examine a possible link between readmission and visa facilitation:

> The European Council (…) invites the Council and the Commission to examine, with a view to developing a common approach, whether in the

Similarly, these Community readmission agreements include a joint declaration on the intention of Iceland and Norway to sign bilateral readmission agreements with the respective third countries because these countries participate in the Schengen agreements.

[10] Commission of the European Communities (2002b).

[11] Ibid. See also Commission of the European Communities (2003b).

[12] With regard to China, an important agreement, the Destination Status Agreement, had already taken a first step towards visa facilitation in February 2004. It incorporated a readmission clause as a 'quid pro quo' which essentially means visa facilitation for group visits of Chinese tourists to the EU.

> context of the EC readmission policy it would be opportune to facilitate, on a case by case basis, the issuance of short-stay visas to third-country nationals, where possible and on a basis of reciprocity, as part of a real partnership in external relations, including migration-related issues (Council of the European Union, 2004, p. 18).

As Table 1 shows, by the time the negotiations with the Western Balkan countries started in 2006, the link between readmission and visa facilitation had become acceptable for EU member states so that negotiations were combined from the very beginning.

**Table 1. EC Visa Facilitation (VF) and Readmission Agreements (RA): State of Negotiations**

| Country | Type of Agreement | Negotiation Mandate | Start of Negotiations | End of Negotiations | Entering into Force |
|---|---|---|---|---|---|
| Albania | RA | Nov 2002 | March 2003 | April 2005 | May 2006 |
| | VF | Nov 2006 | Nov 2006 | Nov 2007 | Jan 2008 |
| Bosnia | RA | Nov 2006 | Nov 2006 | Nov 2007 | Jan 2008 |
| | VF | Nov 2006 | Nov 2006 | Nov 2007 | Jan 2008 |
| Hong Kong | RA | May 2001 | June 2001 | Nov 2002 | March 2004 |
| | VF* | -- | -- | -- | -- |
| Macao | RA | May 2001 | July 2001 | Oct 2003 | June 2004 |
| | VF* | -- | -- | -- | -- |
| Macedonia | RA | Nov 2006 | Nov 2006 | Nov 2007 | Jan 2008 |
| | VF | Nov 2006 | Nov 2006 | Nov 2007 | Jan 2008 |
| Moldova | RA | Dec 2006 | Feb 2007 | Nov 2007 | Jan 2008 |
| | VF | Dec 2006 | Feb 2007 | Nov 2007 | Jan 2008 |
| Montenegro | RA | Nov 2006 | Nov 2006 | Nov 2007 | Jan 2008 |
| | VF | Nov 2006 | Nov 2006 | Nov 2007 | Jan 2008 |
| Russia | RA | Sept 2000 | April 2001 | May 2006 | June 2007° |
| | VF | July 2004 | June 2005 | May 2006 | June 2007 |
| Serbia | RA | Nov 2006 | Nov 2006 | Nov 2007 | Jan 2008 |
| | VF | Nov 2006 | Nov 2006 | Nov 2007 | Jan 2008 |
| Sri Lanka | RA | Sept 2000 | April 2001 | Feb 2002 | May 2005 |
| | VF | -- | -- | -- | -- |
| Ukraine | RA | Feb 2002 | August 2002 | Oct 2006 | Jan 2008^ |
| | VF | Nov 2005 | Nov 2005 | Oct 2006 | Jan 2008 |

| | | | |
|---|---|---|---|
| **Ongoing Negotiations** | | | |
| Algeria | RA | Nov 2002 | June 2005 |
| | VF | | |
| China | RA | Nov 2002 | April 2004 |
| | VF | | |
| Morocco | RA | Sept 2000 | May 2001 |
| | VF | | |
| Pakistan | RA | Sept 2000 | April 2001 |
| | VF | | |
| Turkey | RA | Nov 2002 | March 2003 |
| | VF | | |

* Hong Kong and Macao were exempted from visa requirements in December 2000

° The provisions on the readmission of third country nationals and stateless people will only become applicable after a transitional period of 3 years.

^ The provisions on the readmission of third country nationals and stateless people will only become applicable after a transitional period of 2 years.

### 3.3 The test case: visa facilitation and readmission agreements with the Western Balkans

The Western Balkan states have particularly close relations with the EU. After the Kosovo war in 1999, the EU launched the Stabilisation and Association Process and granted the non-member states of South Eastern Europe the status of "potential candidates for EU membership" (European Council, 2000). The EU's pre-accession strategy was modelled on the experiences of the Eastern Enlargement although containing some distinctive features, such as the unusually broad range of political and economic conditions (for more details, see Noutcheva, 2007; Trauner, 2007). The EC visa facilitation and readmission agreements to be signed with the Western Balkans were intended to intensify the cooperation on reducing irregular immigration, and, at the same time, bringing relaxation to the tight visa regime the EU had imposed on these countries. Through this, the agreements should be beneficial to both sides. Whereas the EU had a better means to deal with irregular migration transiting or stemming from the Balkans, the countries would come closer to a visa-free regime – an objective they were persistently lobbying for. Of the aspiring candidates in the Western Balkans, only Croatia is visa-free (Council of the European Union, 2001a).

Since the Western Balkan states were placed on the EU's negative visa list in 2001, they were hoping for a quick visa liberalisation scheme. However, the EU recognised a free-visa regime as a long term objective only. The 2003 Thessaloniki Agenda first introduced the prospect of a liberalised visa regime, once certain conditions have been met:

> The EU is aware of the importance the peoples and governments in the Western Balkans attach to the perspective of liberalisation of the visa regime. Meanwhile, progress is dependent on these countries implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration, and

> strengthening their administrative capacity in border control and security in documents (Council of the European Union, 2003b).

Based on the Thessaloniki Agenda, the Commission conducted exploratory talks with each of the Western Balkan countries. The relaxation of the visa regime was not only linked to the signing of an EC readmission agreements but more broadly to "substantial efforts by the countries in question" (Commission of the European Communities, 2006c, p.9). Due to the political salience of the issue in the Western Balkans, the promise of visa liberalisation has provided the EU with a particular strong lever. The Commission defined that through a 'case by case approach' each Western Balkan state may achieve visa liberalisation on its own merit. In addition, the countries' status as candidates or potential candidates should be taken into account (Ibid).

The very concrete go-ahead for the Commission to launch negotiations on EC visa facilitation and readmission agreements was granted on the Council meeting held on 13 and 14 November 2006. The Commission initiated the negotiations with the countries in November 2006, except for Albania whose readmission agreement with the EC entered into force on 1 May 2006. In that case, the negotiations on a visa facilitation agreement started on 13 December 2006. All agreements were officially signed in September 2007 and entered into force on 1 January 2008.

EC visa facilitation and readmission agreements are now a major means to push for further reforms. The European Commissioner Franco Frattini specified that negotiations for visa-free travel can only be started if a smooth and efficient functioning of visa facilitation and the readmission practices is guaranteed, along with efforts to improve effective cross-border police cooperation and measures against corruption (Frattini, 2006). According to the Commission enlargement strategy for 2008/9, each of the target countries will receive a 'roadmap' defining the exact conditions to be met. These documents will deal with the effective implementation of the readmission agreement, and cover other key areas such as border management, document security and measures against organised crime. "Such road-maps will allow the countries concerned to better focus their reform efforts, while also reinforcing the visibility of the EU's commitment to the peoples of the region" (Commission of the European Communities, 2007c, p. 13).

In brief, the Western Balkans qualified perfectly for testing the package of visa facilitation and readmission. These countries aspiring to join the EU have relatively close institutional ties with the EU and are in the immediate neighbourhood. The experiences gained in this geographical setting provided the EU with a model to be used in several neighbouring states. According to the European Commissioner Franco Frattini, the EU seeks to enhance the EU's internal security "through global visa facilitation and readmission agreements aimed in the longer term at the Union's neighbourhood countries, on the model currently being developed in the Balkans" (Agence Europe, 04/05/2006).

## 3.4 Is there a clear EU strategy on visa facilitation and readmission in the European Neighbourhood Policy?

As mentioned earlier, the link between visa facilitation and readmission was made for the first time with the Russian Federation and the Ukraine. When their negotiations on an EC readmission agreement did not advance, the EU linked the negotiations to the incentive of visa facilitation. With Moldova being the next neighbouring state, visa facilitation and readmission were commonly negotiated right from the start. The EC-Moldovan negotiations on visa facilitation and readmission started in February 2007

and lasted until November 2007 with both agreements entering into force on 1 January 2008. Of course, after the end of negotiations with these countries the question remains: are they exceptional cases or rather pioneers that other neighbouring states may follow? Does the European Neighbourhood Policy contain a clear strategy on visa facilitation and readmission?

The basic set-up of the European Neighbourhood Policy was outlined in the European Commission's Communication on a 'Wider Europe', published in March 2003, followed by the more developed strategy on the 'European Neighbourhood Policy', published in May 2004. In the documents, the Commission did not delineate a clear strategy on visa facilitation and readmission. The 'Wider Europe' document only vaguely mentioned that the "EU could also consider the possibilities for facilitating the movement of citizens of neighbouring countries participating in EU programmes and activities" (Commission of the European Communities, 2003a, p. 11). Holders of diplomatic and service passports should also possibly benefit from visa facilitation. On readmission, the documents were more precise. "Concluding readmission agreement with all the neighbours, starting with Morocco, Russia, Algeria, Ukraine, Belarus and Moldova, will be an essential element in joint efforts to curb illegal migration" (Ibid).

Over time, the EU shaped a more precise strategy in the field. EC visa facilitation and readmission agreements are now considered a standard instrument in the ENP. The reasons for this strategic shift are twofold. On the one hand, the negotiations on an EC visa facilitation and readmission agreement with Ukraine, the Russian Federation and Moldova clarified how useful the incentive of visa facilitation is to achieve the objective of signing readmission agreements. On the other hand, more and more reports emphasising the negative perceptions of the ongoing visa practices made EU member states rethink their visa policy. The EU had to admit that "the length and cost of procedures for short-term visas (e.g. for business, researchers, students, tourists or even official travel) is a highly 'visible' disincentive to partner countries, and an obstacle to many of the ENP's underlying objectives" (Commission of the European Communities, 2006a, pp. 3-4). When in 2006 the German Presidency intended to strengthen the European Neighbourhood Policy, visa facilitation became a major means to dispel the doubts of the ENP countries that the EU was not willing to make serious concessions. In its communication on how to strengthen the ENP, the Commission proposed that the "Union should be willing to enter negotiations on readmission and visa facilitation with *each neighbouring country* with an Action Plan in force, once the proper preconditions have been met" (Commission of the European Communities, 2006a, p.6, emphasis added).

Hence, a major precondition is an ENP Action Plan in force. Most participating states now fulfil this requirement. Action Plans were agreed with Israel, Jordan Moldova, Morocco, the Palestinian Authority, Tunisia and Ukraine in 2005, with Armenia, Azerbaijan and Georgia in 2006, and with Egypt and Lebanon in 2007. The other countries neighbouring the EU do not yet have such an agreement: Belarus, Libya and Syria are still excluded from the ENP structures;[13] Algeria has decided not to negotiate an ENP Action Plan yet; and Russia refrained from participating in the ENP but agreed with the EU on a Strategic Partnership covering four "common spaces".

[13] For a detailed analysis of the EU-Belarus relations, see G. Dura (2008), *The EU's Limited Response to Belarus' Pseudo 'New Foreign Policy'*, CEPS Policy Brief No. 151, CEPS, Brussels, February 2008.

**Table 2. Specific Action on Visa Facilitation and Readmission in the ENP Action Plans**

| | ENP Action Plan | Specific action on visa facilitation in ENP Action Plan | Specific action on readmission in ENP Action Plan |
|---|---|---|---|
| **Algeria** | No | | |
| **Armenia** | Yes | "exchange views on visa issues" | "initiate dialogue on readmission which could possibly lead to an EC – Armenia readmission agreement" |
| **Azerbaijan** | | "exchange views on visa issues" | "initiate dialogue on readmission which could possibly lead in the future to an EC-Azerbaijan agreement in this area" |
| **Belarus** | No | | |
| **Egypt** | Yes | "Cooperate in the field of improving the movement of persons, including to facilitate the uniform visa issuing procedures for certain agreed categories of persons" | "Develop the cooperation between Egypt and EU on readmission, including negotiating readmission agreements between the parties, building on Article 69 of the Association Agreement" |
| **Georgia** | Yes | "exchange information on visa issues" | "Strengthen the dialogue and cooperation in preventing and fighting against illegal migration, which could possibly lead in the future to an EC-Georgia agreement on readmission" |
| **Israel** | Yes | No short stay visa requirements | No specific action |
| **Jordan** | Yes | "In order to facilitate the circulation of persons, examine … possibilities of facilitation visa issuing (simplified and accelerated procedures in conformity with the acquis)" | No specific action |
| **Lebanon** | Yes | "Cooperate on facilitating the movement of persons … in particular examining the scope for facilitating visa procedures for short stay for some categories of persons" | "Improve cooperation … on all forms of readmission including the possibility of negotiating a readmission agreement" |
| **Libya** | No | | |
| **Moldova** | Yes | "initiate a dialogue on the possibilities of visa facilitation" | "Initiate a dialogue on readmission in the perspective of concluding a readmission agreement between Moldova and EU" |
| **Morocco** | Yes | "constructive dialogue | "conclusion and |

| | | | |
|---|---|---|---|
| | | …including examination of visa facilitation" | implementation of balanced readmission agreement with the EC" |
| **Palestinian Authority** | Yes | No specific action | No specific action |
| **Syria** | No | | |
| **Tunisia** | Yes | "facilitating the movement of persons … by looking in particular at possibilities of relaxing short-stay visa formalities for certain categories of persons" | "initiate a dialogue on return and readmission with a view to concluding a readmission agreement with the EU" |
| **Ukraine** | | "establish constructive dialogue on visa facilitation" | "need for progress on the ongoing negotiations for an EC-Ukraine readmission agreement" |

*Source:* ENP Action Plans and Country Reports, downloadable on the homepage of the European Commission: http://ec.europa.eu/world/enp/documents_en.htm (last accessed on 30 January 2008).

The figure shows that even though theoretically each neighbouring state may conclude an EC visa facilitation and readmission agreement, the concrete action in this field differ amongst them. In the visa domain, most often the clauses are rather vague referring to commonplaces such as "establishing constructive dialogues" or "exchange views". In an interview for this analysis, a Commission official stated that if new EC visa facilitation and readmission agreements are to be negotiated, the Black Sea area would be treated as a priority. There is a tendency to consider this "fashionable area" first, according to an EU official.[14]

EC visa facilitation and readmission agreements may also become an important element in the EU's efforts to develop a new 'global approach on migration'. A different, more comprehensive migration policy was defined as a core objective at the October 2005 Summit at Hampton Court. Following the summit, the Commission proposed a whole set of new measures on irregular and legal migration focusing in geographic terms on Africa and the Mediterranean region. Under the heading of "Legal Migration", the establishment of "mobility packages" with a range of interested third countries was recommended:

> There is a clear need to better organise the various forms of legal movement between the EU and third countries. Mobility packages would provide the overall framework for managing such movements and would bring together the possibilities offered by the Member States and the European Community, while fully respecting the division of competences as provided by the Treaty (Commission of the European Communities, 2006b, p. 7).

Mobility packages would then be the heading to manage legal migration flows with selected third countries, particularly from the neighbourhood, provided that they prove willing to cooperate on readmission, irregular migration and border management. These packages go beyond facilitated travel opportunities and also incorporate ideas

[14] Authors' interview with EU official, 18 January 2008.

on promoting circular migration (temporary or seasonal migration) and legal migration based on the labour needs of interested EU member states.[15] In this privileged form of cooperation with selected third countries, visa facilitation and readmission policies will only be two components in a comprehensive cooperation on migration issues. In exchange for receiving new opportunities for legal migration, the third countries concerned will have to agree on far-reaching commitments that may even include measures "to promote productive employment and decent work, and more generally to improve the economic and social framework conditions […] as they may contribute to reducing the incentives for irregular migration" (Commission of the European Communities, 2007b, p. 4).

In contrast, the ACP (African, Caribbean and Pacific) countries are not considered as qualifying for EC visa facilitation and readmission agreements. The Cotonou agreement is regarded as a sufficient basis to make ACP countries cooperate on readmission. "The readmission obligations contained in Article 13 Cotonou is crucial, and is an appropriate basis for supplementary bilateral readmission agreements between EU Member States and selected ACP countries" (Commission of the European Communities, 2006b, p. 9).

# 4. The content and implications of EC visa facilitation and readmission agreements

This section analyses the EC visa facilitation and readmission agreements in terms of substance and implications. They are considered in relation to each other and systematically assessed in terms of their similarities and differences.

## 4.1 The content of EC visa facilitation agreements

This part evaluates the visa facilitation agreements concluded with Serbia (2007f), Montenegro (2007e), Macedonia (2007b), Albania (2007c), Bosnia and Herzegovina (2007a), Moldova (2007d), Ukraine (2007h) and Russia (2007g) in terms of substance and content.

The main purpose of the visa facilitation agreements is to facilitate, on the basis of reciprocity, the issuance of short-stay visas (90 days per period of 180 days). Long-stay visas remain within the authority of the member states. A visa-free travel regime is recognised in all agreements as the long-term objective. The wording of this objective differs slightly, however. In the visa facilitation agreement with Ukraine and Moldova the EU recognises the "introduction of a visa free travel regime […] as a long-term objective". A similar clause is included in the agreement with Russia, where the parties reaffirmed "the intention to establish the visa-free travel". The clearest statement for visa liberalisation was made in the agreements with the Western Balkans. In all agreements with the Western Balkan states, it was seen as the "first concrete step towards the visa free travel regime".

[15] The challenge in negotiating mobility packages is that they touch on areas of EU member state national competence as well as others that fall within the Community's remit. For more details, see the Commission's communiqué (2007b) on circular migration and mobility partnerships.

The main section of the EC visa facilitation agreements concern which categories of citizens may benefit from facilitated visa procedures. Attached to each category is the documentary evidence regarding the purpose of the journey. All EC visa facilitation agreements under research here include the following categories of citizens:

a) members of official delegations participating in meetings, consultations, negotiations, exchange programmes and events (in possession of official invitation)

b) business people and representatives of business organisations (with written request from a host legal person or company)

c) drivers of international cargo and passenger transportation services (with written request from the national association of carriers)

d) members of train, refrigerator and locomotive crews in international trains (with approval of competent company)

e) journalists (with certificate)

f) scientists and persons active in cultural and artistic activities, including university and other exchange programmes (with written request from host organisation)

g) pupils, students, post-graduate students and accompanying teachers (with written request or a certificate of enrolment from the host university)

h) participants in international sports events and persons accompanying them (with written request from the host organisation)

i) participants in official exchange with twin towns (with approval of host mayor)

j) close relatives (spouse, children, parents, grandparents, grandchildren) visiting their family legally residing in the EU (with written request)

k) relatives visiting for military or civil burial grounds (with official document confirming the fact of death).

The agreement with Russia stops at this point. The one with Ukraine (and all others) include also the category of

l) persons visiting for medical reasons (with official document from host medical institution).

The EC visa facilitation agreements with Moldova and the Western Balkans contain:

m) civil society organisations when undertaking trips for the purposes of educational training, seminars, conferences (with request from host institution)

n) professionals who participate in international exhibitions, conferences, symposia, seminars or similar events (with written request from host organisation)

The agreements with the Western Balkan states are the farthest-reaching. They also include

o) tourists (with certificate or voucher from a travel agency or a tour operator)

p) religious communities (with approval from registered religious community)

Only the one with Albania contains

q) persons politically persecuted during the communist regime (with a certificate issued by the Institute for the Integration of the Persecuted Persons)

The agreements are almost identical in their wording. The ordering of the categories differs, however. Interestingly, the visa facilitation agreement with Macedonia is the only one that does not begin with "members of official delegations" but with students, scientists and members of the civil community. In term of categories of persons eligible for multiple-entry visas, the visa facilitation agreements with the Western Balkan states are again the more comprehensive ones. All categories mentioned beforehand may apply for a multiple entry-visa with the exception of tourists. However, only members of official delegations, national or regional governments and parliaments, close family members visiting their relatives in the EU, business people and journalists may apply for a multiple-entry visa with a term of validity up to five years. The multiple-entry visa for all other categories may be valid for one year only.

The agreements fix the fee for processing visa applications for *all* citizens of the target country at €35. In the EC visa facilitation agreements with Russia and Ukraine, a clause adds that the fees increase to €70, if the request is urgent (3 days before departure). However, there are some reservations to this stipulation e.g. close relatives, pupils and students will continue to pay the reduced fee of €35 even if the request is urgent.[16]

The EC visa facilitation agreements provide certain categories of citizens with the waiving of the visa fees. The least comprehensive agreement in terms of persons benefiting from the waiving of the visa fee is the EC-Russian visa facilitation agreement, followed by the ones with Ukraine and Moldova.

**Table 3. Categories of Persons Benefiting from a Waiving of the Visa Fee**

| | ***Russia*** | ***Ukraine*** | ***Moldova*** | ***Western Balkan states*** |
|---|---|---|---|---|
| close relatives (spouses, children, parents, grandparents, grandchildren) | X | X | X | X |
| members of official delegations members | X | X | X | X |
| regional or national government and parliaments, Constitutional Courts or Supreme Courts | X | X | X | |
| pupils, students and post-graduate students and accompanying teachers | X | X | X | X |
| disabled persons and those accompanying them | X | X | X | X |
| persons travelling on humanitarian grounds, including medical purposes | X | X | X | X |
| participants in international sports events and persons accompanying them | | X | X | X |
| participants in youth international sports events | X | | | |
| participants in scientific, cultural | X | X | X | X |

[16] The category of people which may not be target by the later clause is considerably longer in the EC-Ukraine agreement than in the EC-Russia one.

| | | | | |
|---|---|---|---|---|
| and artistic activities | | | | |
| participants in official exchange programmes organised by twin cities | X | X | X | X |
| journalists | | X | X | X |
| pensioners | | X | X | X |
| drivers of international cargo and passenger transportation | | X | X | X |
| members of train, refrigerator and locomotive crews | | X | X | X |
| children under the age of 18 and dependent children under the age of 21 | | X | | |
| members of professions participating in international exhibitions, conferences, symposia, seminars or similar events | | | X | X |
| participants representatives of civil society organisations | | | | X |
| representatives of religious communities | | | | X |
| Children under the age of 6. | | | | X |
| mayors and members of municipal councils | | | | Only Macedonia |
| Politically persecuted persons during the communist regime | | | | Only Albania |

*Source:* Authors' summary compiled from EC visa facilitation agreements Serbia (2007f), Montenegro (2007e), Macedonia (2007b), Albania (2007c), Bosnia and Herzegovina (2007a), Moldova (2007d), Ukraine (2007h)and Russia (2007g).

The agreements with Macedonia and Serbia contain the additional clause that Bulgaria and Romania, both of which are not yet bound by the Schengen acquis, may also waive the fees for processing national short stay visas for citizens of those two countries.

The decision on the visa application shall be taken within ten calendar days. This period, may be extended up to 30 calendar days, notably when further scrutiny of the person applying is needed. The agreements are jointly managed and monitored by a committee composed of Commission officials, assisted by experts from the member states, and the partner countries' officials. The committee may suggest amendments or additions to the present agreement and settle disputes arising from it. It meets at least once a year but may do so more often, if necessary.

A Protocol annexed to the agreement clarifies the implications of the agreement for the states that do not fully apply the Schengen acquis. The UK and Ireland, not included in the territorial validity of the agreement, were invited to conclude bilateral agreements. The EC visa facilitation agreements do not apply to Denmark, Iceland and Norway either, which were asked to conclude bilateral agreements, in similar terms, with target third-countries.

In some agreements, a special reference was made to EC Regulation No 1931/2006 concerning the establishment of a system of local border traffic. Hungary, Poland,

Slovakia and Romania declared their willingness to negotiate a local border traffic regime with Ukraine. In the Western Balkans, Macedonia will negotiate one with Bulgaria, Serbia another with Bulgaria, Hungary and Romania. Moldova and Romania also declared their willingness to establish a local border traffic regime.

The agreements intend to make the procedures for issuing short stay visas more transparent. Better information on the validity, the documents necessary and minimum requirements shall be given. The visa facilitation agreement with Moldova is the only one that declares the intention to improve the EU presence in the country and set up a common application centre in Chisinau. The visa facilitation agreements with the Western Balkans end by acknowledging their intention to "give a wider definition to the notion of family members that should benefit from visa facilitation". The wish particularly concerns siblings and their children. "The European Community invites the Member States' consular offices to make full use of the existing possibilities in the acquis communautaire for facilitating the issuance of visas to this category of persons, including in particular, the simplification of documentary evidence requested for the applicants, exemptions from handling fees and where appropriate the issuance of multiple entry visas".

## 4.2 The implications on the visa facilitation side

The EC visa facilitation agreements with Russia entered into force in June 2007 and those with Ukraine, Moldova and the Western Balkans on 1 January 2008. Due to this short period, it is too early to assess the impact of the visa facilitation agreements in terms of modified visa data. According to the visa data collection of Council secretariat and Commission, the EU member states issued 11,709,251 visas worldwide in 2005.[17]

**Table 4. EU Visa data for the year 2005**

| **Group 1** | | **Group 2** | |
|---|---|---|---|
| Russia | 2,833,392 | China | 592,644 |
| Ukraine | 1,348,162 | India | 292,861 |
| Belarus | 629,849 | Iran | 104,898 |
| Serbia & Montenegro | 541,244 | Kazakhstan | 104,166 |
| Turkey | 532,177 | Lebanon | 74,299 |
| Albania | 136,569 | Indonesia | 67,931 |
| Bosnia & Herzegovina | 128,750 | Pakistan | 40,243 |
| Moldova | 61,941 | Syria | 37,708 |
| Georgia | 40,322 | Vietnam | 35,372 |
| Armenia | 21,911 | Jordan | 31,449 |
| Croatia | 17,545 | Sri Lanka | 16,984 |
| Azerbaijan | 16,541 | Uzbekistan | 12,232 |
| Macedonia | 14,066 | Bangladesh | 11,808 |
| | | Kirgizstan | 8,930 |
| | | Iraq | 6,563 |

[17] Unfortunately, the data is presented in such a way that it cannot be determined if only Schengen visas are included, i.e. short stay visas in the Schengen area, or also national long stay visas.

| | | | |
|---|---|---|---|
| | | Turkmenistan | 4,033 |
| | | Afghanistan | 3,526 |
| | | Tajikistan | 1,735 |
| **Total Group 1** | **6,322,469** | **Total Group 2** | **1,447,382** |

*Information:* Transit A visas are not included.

*Source:* Visa data collection managed by the Council secretariat and the Commission (Commission of the European Communities, 2007a, p. 78).

In terms of substance, the EC visa facilitation agreements with the Western Balkans are the more comprehensive ones. They contain the clearest statement for visa-free travel and more categories of citizens that benefit from facilitated travel, including tourists in particular. The EC-Russian visa facilitation agreement is at the other end of the scale. "The present – not very ambitious – agreement on the facilitation of visas is an example of the essentially pragmatic way in which [the EU-Russian] relations are unfolding", according to the assessment of the European Parliament (European Parliament, 2006, p. 6). It considered the agreement lacking a "human rights and democracy clause" and demands that "conditionality must also be a cornerstone of EU external policy on visas", particularly with regard to the "rules of democracy and the rule of law" (European Parliament, 2006, p. 9).

The benefit of all EC visa facilitation agreements is to fix the price for processing the visa application for all citizens at €35, and to waive the fees for certain categories of persons. Therefore the target countries are not affected by the Council Decision of 1 June 2006 which "readjusted" the visa application processing costs at €60 "to cover the additional costs […] corresponding to the introduction of biometrics and the VIS" (Council of the European Union, 2006).

However, viewed from the perspective of the target countries, the fixing of the prize at €35 does not imply a positive change but rather the prolongation or, in some cases, a deterioration of the status quo. In terms of applying for a short-stay visa to the long-term participating Schengen states, the situation remains unchanged. Third-country citizens travelling to, say, Spain or Germany continue to pay the same amount, as opposed to the increased fee of €60. In terms of applying for a short-stay visa to the new member states in Central and Eastern Europe, the situation deteriorated despite the EC visa facilitation agreement entering into force. On December 21st, 2007, the new member states of Central and Eastern Europe (with the exception of Cyprus, Bulgaria and Romania) joined the Schengen area and lifted their border controls to the West. The transitional period, i.e. the period after these states obtained membership but prior to their full implementation of the Schengen Treaty, came to an end. Within this transitional period, the new member states were allowed to issue visas for neighbouring states free of charge or for a low fee and on relatively uncomplicated terms. Poland, for instance, issued 560,000 visas annually for Ukraine citizens which is nearly double as many as all Schengen states combined (290,000) (Boratynski et al., 2006b, pp. 2-3). The visa procedures were not only cheaper or free of charge, but also the procedures were simpler, the waiting time shorter and the rejection rate significantly lower (in case of Poland for Ukraine 1.2% as compared to 11.5% in case of the Schengen states (Ibid). In accordance to the Schengen acquis, the new member states are now in charge of controlling the external Schengen border which implies the full adherence of the strict Schengen entry rules. Instead of issuing visas free of charge, countries such as Poland now have to charge €35 for issuing a short-stay visa. The EC visa facilitation agreements do not provide for special arrangements for the new

member states vis-à-vis their neighbours. Hence, "paradoxically, though in principle the [visa facilitation] agreement is to ease the situation, after the New Member States accession to the Schengen area, it will worsen" (Boratynski et al., 2006b, p. 3).[18]

There is one measure, however, that should explicitly prevent negative side-effects of the Schengen Eastern Enlargement: the establishment of local border traffic regimes. The issuing of 'local border traffic permits' for border residents is an important measure to foster good neighbourly relations between border regions at the EU's external borders. As mentioned above, there are close socio-economic links between the new member states in Central and Eastern Europe and their neighbours to the East and South-East. Many families still manage subsistence on shuttle-trading of foodstuff or other goods in between the border regions. For them, an uncomplicated crossing of the EU external border is of high interest. The local border traffic concerns residents living in a border zone of 50 km and authorises them to move freely in the border zones of both countries. Due to this set-up, however, the local border traffic regime potentially affects only a comparatively small number of citizens in a closely circumscribed area. At the Ukrainian border with Poland, the local border traffic may include only Uzhhorod as a larger town with more than 100,000 inhabitants (Boratynski et al., 2006b, p. 3). It is also worth mentioning that residents of border regions often search for other, more comprehensive venues to move freely into the EU. A comparatively unproblematic way for citizens of countries such as Moldova or Macedonia has been to benefit from the neighbouring country's status as EU member state. Many Macedonians have therefore applied for a Bulgarian passport, many Moldovans for a Romanian or Bulgarian one. Angel Marin, Bulgaria's vice president, announced in January 2008 that "between 2002 and 2007, some 39,000 Macedonians and as many Moldovans applied for Bulgarian passports. […] Of those, some 13,925 Macedonians and 10,613 Moldovans were granted passports" (quoted in EU business, 2008). In Moldova, there is a Bulgarian minority of 60,000 to 80,000 and in Macedonia, Bulgaria considers the country's Slavic population as being of Bulgarian origin and therefore easily grants passports (Ibid). EU officials are aware of the seriousness of this problem. In an interview, a high diplomat of an EU member state voiced concerns that

> the Bulgarians will come sooner or later to claim territory from the Macedonian state when one day the majority [in some border regions to Bulgaria] will possess a Bulgarian citizenship. Once, they will even somehow understandably pose the question: What is the foundation of statehood in these areas?[19]

In light of this development, it is questionable if the local border traffic is a sufficient answer although it clearly is an asset to many border residents living at the EU's external border.

The waiving of the visa fees for certain parts of the population, the speedier processing of the visa application (normally 10 calendar days), the possibility of multiple-entry visas to certain categories of people and a shorter list of documents required are plus points the EC visa facilitation agreements bring about. The visa procedures, including the length of the visa application procedure and the long list of documents required, were often conceived as troublesome and lacking transparency. According to an EU visa policy monitoring survey of eight EU member states in four Eastern European countries conducted by the Stefan Batory Foundation (Boratynski et al., 2006a), the

[18] The scholars draw this conclusion by assessing the EC-Ukraine visa facilitation agreement.

[19] Authors' interview with EU member state official in Skopje, 2 May 2006.

length of procedures differed considerably among the EU member states, ranging on average from two days in the case of Poland over eight days in Germany up to 14 days in the case of the Czech Republic. What is more, the consular practices on how to issue a short stay visa equally differed among EU member states. Applicants were frequently required to wait for hours in queues, did not receive reliable information on which documents were needed, and, in case a document was lacking, needed to return personally with the missing one. Usually consulates do not accept documents sent by post or e-mail, implying that the applicant has to come again. As the relevant consulate is usually a long distance from the applicant's place (according to the EU visa policy monitoring survey (2006a, p. 18), the average distance to the closest consulate was 300 km) the numerous visits may turn out to be costly and burdensome. Getting a Schengen visa could therefore be a "bureaucratic and costly nightmare", as once even Enlargement Commissioner Olli Rehn (2006) admitted. The EC visa facilitation agreements explicitly aim at making these bureaucratic routines less cumbersome and more transparent, notably through the newly installed joint committee. It is in charge of providing for a smooth implementation of the agreement and of suggesting amendments or additions to the agreement. Therefore the committee may assume an important role in ensuring fair and transparent visa application procedures. The smooth implementation of the agreement is of particular relevance in view of visa liberalisation as a long-term objective.

The EC visa facilitation agreements have one major disadvantage, however. They divide the society of the target country into two groups

> the privileged few who can get a multiple-entry visa, benefit from the simplified procedure […], or profit from the waiving of the application fee for the visa, and as to the remainder: the vast majority of ordinary citizens who cannot enjoy such advantages. This can create a feeling of discrimination and lead to the conclusion that the European Union is interested only in the […] elite (Boratynski et al., 2006b, p. 2).

A self-evident implication of this separation is that the non-privileged ones may try to obtain the same advantages than the privileged ones possibly leading to an increased level of corruption. Some may attempt a bribe to get also the privileged status of, say, a journalist or a driver of international cargo.

It is still too early to assess the quality of the implementation of the EC visa facilitation agreements. In interviews for this analysis, some experts pointed to initial problems in implementing the stipulations of the agreements, however. Certain EU member states would circumvent the reduced fee of €35 by charging additional fees for processing the visa application. Such practices were reported by the French consulate in Russia and by several EU member states in Ukraine. In Ukraine, another problem would be that EU member states had not received updated instructions on how to issue visas under the EC visa facilitation agreement by the time the agreement entered into force. Therefore, despite the new stipulations in force, the bureaucratic practices have hitherto not changed significantly.[20]

[20] Authors' interviews with EU official, 18 January 2008, and Ukrainian specialist on visa policy, 25 January 2008.

## 4.3 The content of EC readmission agreements

Readmission agreements generally cover procedural provisions regarding return procedure, transit return arrangements, responsibility criteria, standard of proof, time limits and cost distribution, although the exact nature of these procedures can vary significantly. The most difficult issue to agree upon is the readmission of third country nationals and stateless persons. The contestable points lie in approving the travel route of those migrants and providing evidence of the fact that they had transited the country before entering the EU's territory. The proof of nationality is highly critical, too. According to the European Commission, other controversial technical issues include the time limits applicable, the use of the EU standard travel document for expulsion, the means of evidence including prima facie evidence, and the use of charter flights (Schieffer, 2003, p. 354). In addition, the relation between a new Community agreement and possibly existing bilateral agreements with individual member states will have to be assessed.

The European Commission pursues a standard approach in negotiating readmission agreements with third countries and seeks to achieve final texts that have as many common features as possible. Thus, the EU's set of demands and expectations is the same for each of the third countries. The first draft of the texts that the Commission transmits to its negotiation partners typically does not vary widely. During negotiations, single adjustments are required according to the respective country's objections and demands, so that ultimately agreements will differ.

The readmission agreements the Community signed so far with Albania, Bosnia, Hong Kong, Macao, Macedonia, Moldova, Montenegro, Russia, Serbia, Sri Lanka, and Ukraine, are divided into seven or eight sections with 21 to 23 articles altogether:

- Purpose of the agreement: rapid and effective procedures for identification and repatriation of persons who do not, or no longer, fulfil the conditions for entry, residence or presence;
- Definitions;
- Readmission obligations: covering own nationals, third country nationals and stateless persons;
- Readmission procedure: time limits, common application forms, means of evidence, transfer modalities, modes of transport;
- Transit operations: extent of support to be given by the requested state; circumstances to refuse or revoke transit permission;
- Costs, data protection and non-affection of international rights and obligations;
- Implementation and practical application;
- Final provisions: entry into force, duration, termination, and legal status of annexes.

All agreements include several annexes regarding documents considered as proof or prima facie evidence of nationality, and of proof or prima facie evidence of the conditions for readmission of third country nationals and stateless persons. Some of them also contain common statements regarding the meaning of the agreement for Denmark, Norway, and Iceland.

Besides this overall similar structure, substantial differences in the agreements exist:

- *Readmission obligations of the signatories:* Ukraine is the only country for which the agreement does not differentiate between the obligations by the Community on the one hand and the contracting state on the other hand.
- *Persons to be readmitted:* The agreements with Bosnia, Macedonia, Moldova, Montenegro and Serbia explicitly state that signatories shall also readmit minor unmarried children of the person to be readmitted as well as spouses holding another nationality unless they have an independent right of residence. The agreements with Russia and Ukraine require readmission "irrespective of the will of the person to be readmitted".
- *Readmission procedure:* Several states have introduced an accelerated procedure if a person has been apprehended in the border region after irregularly crossing the border coming directly from the territory of the requested state (Macedonia, Moldova, Russia, Serbia, Ukraine). In this case, the requesting state may submit a readmission application within two working days of this person's apprehension.
- *Time limits:* The time limit for submitting a readmission application varies between six (Moldova) and twelve (Albania) months. The time limit for replying to the application varies between 10 working days (Serbia) and 25 calendar days (Russia). Possible extensions lay in between 2 working days (Moldova) and 60 calendar days (Russia). The requested validity of readmission travel documents lies between 30 days (Russia) and six months (Albania). The requesting state has to decide about a transit procedure in a certain time period, which varies between 4 (Moldova) and 10 (Ukraine) working days. For Russia, no time limit has been specified.
- *Transit procedure:* Ukraine is the only country specifying conditions for escorts in case of transit of third-country nationals or stateless persons.
- *Entry into force:* The obligations concerning the readmission of third-country nationals and stateless persons defined in the agreements between the EC and Albania, Russia and Ukraine shall only become applicable after a certain transition period. For Albania and Ukraine, this transition period was agreed to be two years after the agreement entered into force; in the case of Russia, this is a three-year period. In contrast to the Albanian agreement, which was signed in 2005, the agreements for Russia and Ukraine signed in 2007 foresee that during the transition period, these obligations shall only be applicable to stateless persons and nationals from third-countries with which bilateral arrangements on readmission exist.

On the one hand these differences relate to the different geographic conditions, political situations and histories of the signatory countries. On the other hand, however, changes evolved over time when the EC became increasingly experienced in negotiating readmission agreements. This can be very well illustrated by means of the non-affection clause. Here, pressure from the European Parliament and NGOs resulted in modification of the wording over time. In the case of Hong Kong and Macao, the clause had the following wording:

> This Agreement shall be without prejudice to rights, obligations and responsibilities arising from International Law applicable to the Community, the Member States and the Hong Kong SAR (Council of the European Union, 2002b, p. 23).

After the European Parliament and several human rights organisations had strongly criticised this non-affection clause for not explicitly referring to human rights or refugee law, the agreement with Sri Lanka included the following wording:

> This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Sri Lanka arising from International Law and, in particular, from any applicable International Convention or agreement to which they are Parties (Council of the European Union, 2003a, p. 24).

Again, criticism was harsh. In consequence, the wording of the Albanian agreement became more precise:

> This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Albania arising from International Law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, and international instruments on extradition (Council of the European Union, 2005, p. 22).

The agreement, which was signed next, was that with the Russian Federation. Even though it does not call it "non-affection clause" but "relation to other international obligations", the list of legal documents to be considered became even longer:

> 1. This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and the Russian Federation arising from International Law and, in particular, from:
>
> (a) the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees;
>
> (b) the European Convention of 4 November 1950 for the Protection of Human Rights,
>
> (c) the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
>
> (d) international treaties on extradition and transit;
>
> (e) multilateral international treaties containing rules on the readmission of foreign nationals, such as the Convention on International Civil Aviation of 7 December 1944 (Council of the European Union, 2007i, Article 18).

The agreements with Bosnia, Macedonia, Moldova, Montenegro and Serbia additionally refer to the international conventions determining the state responsible for examining applications for asylum. Instead, the agreement with Ukraine additionally refers to the Universal Declaration of Human Rights of 10 December 1948 and the International Covenant on Civil and Political Rights of 19 December 1966.

For the first time, the readmission agreement with Russia makes explicitly clear that provisions of the EC readmission agreement shall take precedence over provisions of any bilateral arrangements on readmission. Since then this clarification has been part of all new agreements.

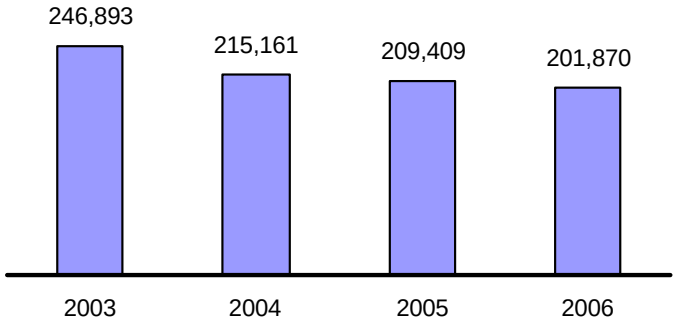
After being in force, each EC readmission agreement will establish a readmission joint committee, which shall consist of representatives of the third country and of the Commission acting on behalf of the European Community. The latter shall be assisted

by experts from member states. The joint committee will be responsible for the implementation of the agreement. Furthermore, The European Commission's Directorate General 'Justice, Freedom, and Security' is supported by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), which coordinates, along with others, the operational aspects of removal of irregular third country nationals and thus plays a decisive role in the implementation of readmission agreements (for more details, see Carrera, 2007; Jorry, 2007).

## 4.4 The implications on the readmission side

Data on return is scarce. On the one hand, only limited reliable EU-wide data exist which differentiate between voluntary and forced return; on the other hand, countries of origin most often lack information about the numbers of returnees. Only recently, the European Commission published a working document on "Preparing the next steps in border management in the European Union" containing national statistical data on refused entry, apprehension of irregular migrants, and removal.[21] The data can only serve as a vague indicator because EU member states did not agree upon common criteria and definitions, and some of them provided only incomplete information. Therefore, we have to assume that actual numbers are higher than indicated here.

**Figure 1. Total Number of Removed Aliens (EU-27)**




*Source:* Commission of the European Communities (2008).

Unfortunately, the data has not been broken down into rejected asylum seekers and irregular migrants. Furthermore, because no information has been given about the countries to which removal was implemented, we have to consider that out of the total, an indeterminate number of individuals were simply being re-cycled within the EU, which means they were returned to another EU country from which they had arrived. The total numbers of removed aliens were distributed among member states as follows:

[21] Commission of the European Communities (2008). For older data on the EU15, see also Commission of the European Communities (2002b and 2002a).

**Table 5. Total Number of Removed Aliens (2003-2006)**

| | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|
| Austria | 11,070 | 9,408 | 5,239 | 4,904 |
| Belgium | 9,996 | 9,647 | 10,302 | 9,264 |
| Bulgaria | 814 | 1,271 | 1,608 | 1,501 |
| Cyprus | 3,307 | 2,982 | 3,015 | 3,222 |
| Czech Republic | 2,602 | 2,649 | 2,730 | 1,228 |
| Denmark | 3,100 | 3,093 | 2,225 | 1,986 |
| Germany | 30,176 | 26,807 | 19,988 | 15,407 |
| Estonia | 171 | 101 | 60 | 91 |
| Finland | 2,773 | 2,775 | 1,900 | 1,410 |
| France | 11,692 | 15,672 | 18,120 | 21,271 |
| Greece | 40,930 | 35,942 | 51,079 | 54,756 |
| Hungary | 4,804 | 3,980 | 4,348 | 3,057 |
| Ireland | n.a. | n.a. | n.a. | n.a. |
| Italy | 31,013 | 27,402 | 24,001 | 16,597 |
| Latvia | 375 | 234 | 162 | 141 |
| Lithuania | 846 | 306 | 182 | 168 |
| Luxembourg | n.a. | n.a. | n.a. | n.a. |
| Malta | 847 | 680 | 962 | 781 |
| Netherlands | 23,206 | 17,775 | 12,386 | 12,669 |
| Poland | 5,879 | 6,042 | 5,141 | 9,272 |
| Portugal | 2,798 | 3,507 | 6,162 | 1,079 |
| Romania | 500 | 650 | 616 | 680 |
| Slovenia | 3,209 | 2,632 | 3,133 | 3,173 |
| Slovakia | 1,293 | 2,528 | 2,569 | 2,185 |
| Spain | 26,757 | 27,364 | 25,359 | 33,235 |
| Sweden | 7,355 | 11,714 | 8,122 | 3,793 |
| United Kingdom | 21,380 | n.a. | n.a. | n.a. |
| **Total** | **246,893** | **215,161** | **209,409** | **201,870** |

*Source:* Commission of the European Communities 2008.

Because data is scarce and EU member states do not provide any data or estimations for the future, the transit countries with which the EU signed or seeks to sign Community readmission agreements face great difficulties assessing the numbers of returnees – both their own nationals as well as third country nationals – they have to expect from EU member states after the Community readmission agreement takes effect. This uncertainty creates severe difficulties because authorities are in the dark regarding personnel and administrative capacities required; the extent of reintegration programmes, assistance and job training required; and the scope of detention facilities needed. In addition, it is rather difficult to prioritise with which countries of origin they should begin to negotiate bilateral readmission agreements because they lack experience to help them anticipate which third-country nationals EU member states will readmit to the transit countries.

The problems transit countries face on the basis of readmission agreements with the EU relate to three different groups of people: a. their own state nationals; b. third country nationals; c. asylum seekers.

*Own State Nationals*

As agreed in international customary law, each state is obliged to take back its own nationals. However, since most often the number of nationals from EU neighbouring countries who migrated irregularly to the EU is substantially high, their return creates major difficulties for the home country. First of all, remittances often play a major role in the transit country's economy meaning that many families simply depend upon money transfer from relatives who work abroad irregularly. Return may very well result in the destruction of their economic basis and their deterioration into poverty. Secondly, irregular migrants most often stem from remote or rural areas, but when being returned, these migrants prefer to stay in or around the capital or major cities. As a consequence, their families may leave their villages to join their relatives so that authorities have to deal with internal migration and rapid urbanisation. Another important implication of return is re-emigration. At least in the case of forced return, many migrants look for possibilities to go abroad again because they lack an acceptable prospect in their home country. In all these dimensions, even the return of its own nationals is a rather complex issue that brings about a lot of challenges for transit countries.

*Third Country Nationals*

Even more challenging is the return of third country nationals to transit countries. Almost none of the transit countries around the EU has any experience in readmitting third country nationals to their home countries, and in most cases, readmission agreements with countries of origin are lacking. Because neither the governments of the transit countries nor relevant international organisations nor the EU itself are in a position to reliably predict the potential level of third country nationals that will be returned by EU member states, measures providing for the implementation of third country national readmission are subject to uncertainty. The institutional infrastructure of government authorities is insufficiently developed, and the personnel lack experience in carrying out the various steps of the return procedure. Proper communication among various organisational units is not provided for, the technical equipment is insufficient, and the staff is untrained regarding human rights aspects of the situation and respect for migrants and their needs. Facilities for adequate lodging and accommodation are non-existent, and the return of migrants to their home countries is nearly impossible given all the administrative, organisational, and financial implications of readmission. Therefore, transit countries are in the risk of being left with substantial numbers of aliens posing a social and economic burden and turning these countries into countries of destination in the end.

*Asylum Seekers*

Readmission agreements not only provide for the return of irregular migrants but also for that of rejected asylum-seekers. Sending an asylum-seeker to another state where no persecution is feared is not explicitly forbidden by international law – and that is exactly what readmission agreements are about. According to the Geneva Refugee Convention and its principle of *non-refoulement*, receiving states are obliged to examine the claim before returning the applicant to a third country, to verify that the individual applicant will really be safe. However, cases of expulsion without prior

examination of the claim are common, and in many cases return procedures are rather informal and the returning state merely informs the receiving country of the planned return (Landgren, 1999, p. 26). The majority of bilateral readmission agreements between EU member states and third countries do not contain any explicit reference to the principle of non-refoulement.[22] Even though the notion of 'safe third countries' requires that these countries have signed international agreements, most importantly the Geneva Refugee Convention and the European Convention for the Protection of Human Rights and Fundamental Freedoms, their proper implementation is not considered. Readmission agreements do not explicitly oblige the 'safe third country' to assure asylum seekers access to a fair refugee determination procedure in line with international standards. In addition, returning states might not even make clear that the individual is an asylum seeker who has been refused on formal grounds of the 'safe third country' rule. Chain deportation might be the consequence (for more details, see Kruse, 2006).

The moment the readmission of third country nationals from the EU to neighbouring transit countries begins, their asylum system, which most often is young and very weak might be put at risk. If EU member states make quite extensive use of the possibility of readmitting third country nationals to neighbouring transit countries, and if substantial numbers of these apply for asylum in these countries, the systems might soon be over-loaded. Governments in transit countries already have severe difficulties adhering to time limits, providing interpreter services communicating promptly with applicants, and running shelters for asylum seekers. These difficulties will get even worse when the number of applications rises. Furthermore, sustainable local integration of refugees is very difficult, especially because of the often disastrous economic situation in the transit countries. Moreover, not only rejected asylum seekers but also irregular migrants can apply for asylum upon return, and it can be assumed that substantial numbers of irregular migrants might have a severe claim for protection.

If one assumes that most of the transit countries are not 'safe third countries' of asylum according to UNHCR criteria we can conclude that the return of rejected asylum seekers might imply a lowering of asylum standards below internationally accepted standards. The rights of asylum seekers – to have a minimum quality of living conditions during the procedure, to obtain necessary information, to have a transparent and fair procedure and to have access to an independent appeal process – might be violated on the part of EU member states.

In sum, readmission agreements as such mainly bring about negative consequences and difficult challenges of varying dimensions for countries of origin or transit (Commission of the European Communities, 2002b, p. 26). The negative effects for transit countries very much outweigh those of sending countries because transit countries have to deal with the onward repatriation of third country nationals.

We have seen that it is unclear how many irregular migrants and rejected asylum seekers EU member states *intend* to readmit. In addition, it is still an open question how many they really *can* readmit in the end, for two reasons. First, if the limited capacities of transit countries are exhausted, it might no longer be in the interests of the EU to continue readmitting people because the Union has a basic interest in economic, social, and political stability in neighbouring regions. Second, it is difficult to assess in how many cases member states' authorities have the ability to unambiguously identify the individual's nationality or to provide sufficient proof of

[22] UNHCR (2001); Rogers & Peers (2005).

migration routes. This is a very difficult undertaking, and very often readmission fails because of insufficient proofs. Thus, even if Community readmission agreements will be implemented in an exemplary way, an important question – probably also a quantitative one – remains for EU member states: how to deal with irregular migrants whose nationality or migration routes cannot be identified with sufficient certainty?

The question remains whether readmission agreements are at all an effective tool for managing migration flows, however, also in cases where a sufficiently certain testing of nationality of irregular migrants could be found. If readmitted migrants do receive no support to reintegrate themselves in their home countries or, even worse, run ashore in a foreign transit country, there is nothing that prevents them from trying to enter a European Union member state again. Similarly, it seems to be questionable at least that readmission agreements function as a deterrent and will substantially decrease the flow of irregular migrants to the EU as long as the reasons that make people leave their country and migrate towards the EU persist.

# 5. Conclusion

The aim of this paper has been to assess EC visa facilitation and readmission agreements in terms of objectives, substance and implications.

The analysis has considered the instrument of EC visa facilitation and readmission agreements as a major means to implement a new EU security approach in the neighbourhood. The EU deemed it necessary to balance two conflicting needs: distancing itself from an outside perceived as insecure and strongly controlling its external border lines versus establishing closer relationships with the neighbouring non-EU countries in order to stabilise its surrounding world. It is this predicament that made the EU develop a new security approach understood as the explicit attempt to balance between internal security concerns and external stabilisation needs. EC visa facilitation and readmission agreements were a chief means in doing so since they were regarded as beneficial to both sides. The EU was given a strong lever to make third countries sign readmission agreements and pressure for domestic reforms in justice and home affairs, whereas in the target countries a major cause of discontent was softened by relaxing the tight visa regime and allowing facilitated travel opportunities for bona fide travellers. Moreover, governments of third countries got the opportunity to present themselves domestically as successful negotiators on the international level. The link between visa facilitation and readmission was made for the first time with the Russian Federation and the Ukraine. When their negotiations on an EC readmission agreement did not advance, the EU linked the negotiations to the incentive of visa facilitation. In the Western Balkans, visa facilitation and readmission were commonly negotiated right from the start (with the exception of Albania). This regional setting in South-Eastern Europe provided the EU with a model to be used from now on in several neighbouring states. EC visa liberalisation and readmission agreements may become a standard foreign policy instrument in the European Neighbourhood Policy.

In a next step, the analysis has systematically assessed the EC visa facilitation and readmission agreements in terms of content and implications. In terms of substance, the EC visa facilitation agreements with the Western Balkans are the most comprehensive ones. They contain the clearest statement for visa-free travel and more

categories of citizens that benefit from facilitated travel, including tourists in particular. The agreements with Ukraine and Moldova are in the middle and the EC-Russian visa facilitation agreement at the other end of the scale. The major benefits of the visa facilitation agreements are to arrange more relaxed travel opportunities for certain categories of the population, to fix the price for all citizens at €35, to ensure more transparent and quicker visa application procedures, to govern the establishment of local border traffic regimes and to give the perspective of free visa travel in case of a smooth implementation of the agreement. The main disadvantage is that it separates the population of the target country into two groups – those entitled to the privileges and those who are not. Moreover, the Schengen Eastern Enlargement somehow undermines the positive achievements by making the Central and Eastern European countries strengthen their entry conditions and stop their practice of issuing visas free of charge or for a low fee and on relatively uncomplicated terms. The EC visa facilitation agreements fall short of sufficiently compensating for these changed circumstances. In the context of readmission agreements, the most difficult issue to agree upon is the return of third country nationals and stateless persons. In this regard, three countries have reached concessions in terms of time. While Albania and Ukraine negotiated for a two-year transitional period before the obligations concerning the readmission of third-country nationals and stateless persons shall become applicable, Russia attained a three-year delay. Another important difference between agreements is whether they introduce an accelerated procedure for persons that have been apprehended in the border regions. The main advantage of readmission agreements from the EC's points of views is that the Community gets hold of a legal instrument in order to force transit countries to readmit not only their own but also third country nationals. However, from the point of view of non-EC countries, EC readmission agreements as such only bring about negative consequences, which in the end might put their economic, social and political stability at risk.

# 6. Recommendations

Based on the conclusions, the following policy-related recommendations can be given.

- EU member states should take the considerations of neighbouring states seriously and use the visa facilitation agreements to implement a more user-friendly policy. Issuing a visa should be done in a transparent and comprehensible procedure and not be seen as a privilege.
- The implementation of the EC visa facilitation agreements should be based on the premise that a modification of the EU's negative visa list is realistic and feasible on condition that the cooperation functions effectively. Road Maps, similar to the ones the Western Balkans are given, should be drafted for all target third-countries to clarify the specific conditions and criteria needed for the objective of visa-free travel.
- The stipulations foreseen to soften the negative side-effects of the Schengen Eastern Enlargement should be smoothly implemented (e.g. the Polish-Ukrainian negotiations on a local border traffic regime were still ongoing at the time of

writing).[23] Other measures in this respect e.g. a lower fee for the issuance of visas should be subject to discussions in the joint committees implementing the EC visa facilitation agreements.

- With regard to readmission, the EC should carefully balance costs and benefits for both sides. The EC's responsibility does not end the moment the persons are readmitted. Returning substantial numbers of irregular migrants to neighbouring countries that are overburdened financially, administratively and socially by the challenge of either reintegrating their own nationals or – even more difficult – further readmitting third-country nationals to their countries of origin might put their often weak economic, political and social stability at risk.
- Thus, the EC should take a step further and think about supporting its neighbours in the process of implementation of visa and readmission agreements. Otherwise, the dominant focus on strong and effective control of frontiers might put the stability of neighbourhood regions at risk again.

[23] Authors' interview with Ukrainian specialist on visa policy, 25 January 2008.

# References

Anderson, M. and J. Apap (2002), *Changing Conceptions of Security and their Implications for EU Justice and Home Affairs Cooperation*, CEPS Policy Brief No. 26, Centre for European Policy Studies, Brussels.

Apap, J., J. Boratynski, M. Emerson, G. Gromadzki, M. Vahl and N. Whyte (2001), *Friendly Schengen Borderland Policy on the New Borders of an Enlarged EU and its Neighbours*, CEPS Policy Brief No. 7, Centre for European Policy Studies, Brussels.

Apap, J., S. Carrera and K. Kirisci (2004), *Turkey in the European Area of Freedom, Security and Justice*, EU-Turkey Working Papers No. 3, Centre of European Policy Studies, Brussels.

Bigo, D. (2005), "Frontier Controls in the European Union: Who is in Control?", in D. Bigo and E. Guild (eds), *Controlling Frontiers: Free Movement Into and Within Europe*, Aldershot: Ashgate Publishing Company.

Bigo, D. and E. Guild (eds) (2005a), *Controlling frontiers. Free Movement Into and Within Europe*, Aldershot: Ashgate Publishing Company.

Bigo, D. and E. Guild (2005b), "Introduction: Policing in the Name of Freedom", in D. Bigo and E. Guild (eds), *Controlling Frontiers. Free Movement Into and Within Europe*, Aldershot: Ashgate Publishing Company.

Bigo, D. and E. Guild (2005c), "Policing at a Distance: Schengen Visa Policies", in Bigo, D. and E. Guild (eds), *Controlling Frontiers: Free Movement Into and Within Europe*, Aldershot: Ashgate Publishing Company.

Boratynski, J., L. Chajewski, P. Hermelinski, A. Szymborska and B. Tokarz (2006a), *Visa Policies of European Union Member States. Monitoring Report*, The Stefan Batory Foundation, Warsaw, June.

Boratynski, J., G. Gromadzki, O. Sushko and A. Szymborska (2006b), *Questionable Achievement: EC-Ukraine Visa Facilitation Agreement*, The Stefan Batory Foundation, Warsaw, November.

Boswell, C. (2003), "The 'external dimension' of EU immigration and asylum policy", *International Affairs*, No. 79**,** pp. 619-638.

Carrera, S. (2007), *The EU Border Management Strategy FRONTEX and the Challenges of Irregular Immigration in the Canary Islands*, CEPS Working Document No. 261, Centre for European Policy Studies, Brussels, March.

Commission of the European Communities (2002a), *Annual Report on Asylum and Migration (2001)*, European Commission, Brussels.

Commission of the European Communities (2002b), *Communication from the Commission to the Council and the European Parliament. Integrating Migration Issues in the European Union's Relations with Third Countries*, COM (2002) 703, Brussels.

Commission of the European Communities (2003a), *Communication from the Commission to the Council and the European Parliament. Wider Europe – Neighbourhood: A new Framework for Relations with our Eastern and Southern Neighbours*, COM (2003) 104, Brussels.

Commission of the European Communities (2003b), *Communication from the Commission to the European Parliament and the Council in View of the European Council of Thessaloniki on the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents*, European Commission, Brussels, 03.06.2003.

Commission of the European Communities (2004), *Communication from the Commission to the Council and the European Parliament. Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations*, COM (2004) 4002, Brussels.

Commission of the European Communities (2006a), *Communication from the Commission to the Council and the European Parliament on strengthening the European Neighbourhood Policy*, COM (2006) 726 final, Brussels, 04.12.2006.

Commission of the European Communities (2006b), *Communication from the Commission to the Council and the European Parliament. The Global Approach to Migration one year on: Towards a comprehensive European migration policy*, COM (2006) 735 final, Brussels.

Commission of the European Communities (2006c), *Communication from the Commission: The Western Balkans on the road to the EU: consolidating stability and raising prosperity*, COM (2006) 27, Brussels.

Commission of the European Communities (2007a), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union*, COM (2007) 247 final, Brussels.

Commission of the European Communities (2007b), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions. On circular migration and mobility partnerships between the European Union and third countries*, COM (2007) 248 final, Brussels, 16.5.2007.

Commission of the European Communities (2007c), *Enlargement Strategy and Main Challenges 2007-2008*, COM (2007) 663 final, Brussels.

Commission of the European Communities (2008), *Preparing the next steps in border management in the European Union*, COM (2008) 69 final, Brussels.

Council of Europe (2003), *New Patterns of Irregular Migration in Europe*, Strasbourg: Council of Europe Publishing.

Council of the European Union (1998), *Strategy Paper on Immigration and Asylum Policy*, European Council, Brussels, 01.07.1998.

Council of the European Union (1999a), *Analysis of the Institute Concerning Readmission Agreements*, European Council, Brussels, 27.04.1999.

Council of the European Union (1999b), *Readmission Agreements Concerning Third-Country Nationals*, European Council, Brussels, 26.04.1999.

Council of the European Union (2001a), “Council Regulation (EC) No 539/2001 of 15 March 2001 listening the third countries whose nationals must be in possession

of visas when crossing the external borders and those whose nationals are exempt from that requirement", *Official Journal*, L 81, Brussels, 21.3.2001.

Council of the European Union (2001b), *Intensifying Cooperation between CIREFI and Europol in the Field of Illegal Immigration and related Issues*, 13084/01, Brussels.

Council of the European Union (2002a), *Appointment of the Migration and Expulsion Working Party as the Responsible Body for Assistance and Consultations to the Commission in Relation to the Negotiation of Readmission Agreements*, European Council, Brussels, 13.12.2002.

Council of the European Union (2002b), *Council Decision Concerning the Conclusion of the Agreement Between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the Readmission of Persons Residing Without Authorisation*, European Council, Brussels, 08.11.2002.

Council of the European Union (2002c), *Draft Council Conclusions on Intensified Cooperation on the Management of Migration Flows with Third Countries*, European Council, Brussels, 14.11.2002.

Council of the European Union (2002d), *Note from the Commission to the Council on Readmission Agreements*, European Council, Brussels, 10.10.2002.

Council of the European Union (2003a), *Council Decision Concerning the Conclusion of the Agreement Between the European Community and the Democratic Socialist Republic of Sri Lanka on the Readmission of Persons Residing Without Authorisation*, European Council, Brussels, 09.07.2003.

Council of the European Union (2003b), *The Thessaloniki agenda for the Western Balkans: Moving towards European Integration*, Western Balkans – General Affairs and External Relations Council (GAERC) Conclusions, 16 June 2003.

Council of the European Union (2004), *The Hague Programme: strengthening freedom, security and justice in the European Union*, 16054/04, Brussels.

Council of the European Union (2005), *Council Decision on the Signing of the Agreement Between the European Community and the Republic of Albania on the Readmission of Persons Residing Without Authorisation*, European Council, Brussels, 15.02.2005.

Council of the European Union (2006), *Council Decision of 1 June 2006 amending Annex 12 to the Common Consular Instructions and Annex 14a to the Common Manual on the fees to be charged corresponding to the administrative costs of processing visa applications*, 2006/440/EKE, Brussels.

Council of the European Union (2007a), "Agreement between the European Community and Bosnia and Herzegovina on the facilitation of the issuance of visas", *Official Journal*, L 334/97, Brussels, 19.12.2007.

Council of the European Union (2007b), "Agreement between the European Community and the Former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas", *Official Journal*, L 334/125, Brussels, 19.12.2007.

Council of the European Union (2007c), "Agreement between the European Community and the Republic of Albania on the facilitation of the issuance of visas", *Official Journal*, L 334/85, Brussels, 19.12.2007.

Council of the European Union (2007d), "Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas", *Official Journal*, L 334/169, Brussels.

Council of the European Union (2007e), "Agreement between the European Community and the Republic of Montenegro on the facilitation of the issuance of visas", *Official Journal*, L 334/109, Brussels.

Council of the European Union (2007f), "Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas", *Official Journal*, L 334/137, Brussels.

Council of the European Union (2007g), "Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation", *Official Journal*, L 129/27, Brussels, 15.05.2007.

Council of the European Union (2007h), "Agreement between the European Community and Ukraine on the facilitation of the issuance of visas", *Official Journal*, L 332/68, Brussels, 18.12.2007.

Council of the European Union (2007i), *Council Decision Concerning the Signing of the Agreement between the European Community and the Russian Federation on Readmission*, European Council, Brussels, 17.05.2007.

Dura, G. (2008), *The EU's Limited Response to Belarus' Pseudo 'New Foreign Policy'*, CEPS Policy Brief No. 151, Centre for European Policy Studies, Brussels, February.

Emerson, M. (ed.) (2005), *Democratisation in the European Neighbourhood*, Centre for European Policy Studies, Brussels.

Emerson, M. and G. Noutcheva (2005), *From Barcelona Process to Neighbourhood Policy. Assessments and Open Issues*, CEPS Working Document No. 220, Centre for European Policy Studies, Brussels, March.

Emerson, M., G. Noutcheva and N. Popescu (2007), *European Neighbourhood Policy Two Years on: Time indeed for an 'ENP plus'*, CEPS Policy brief No. 126, Centre for European Policy Studies, Brussels, March.

EU Business (2008), "Some 25,000 new Bulgarians from Macedonia, Moldova", in EUbusiness.com, Luxembourg, 28 January (http://www.eubusiness.com/news-eu/
1201464121.18/).

European Council (2000), *Presidency Conclusions, 19 and 20 June 2000*, Santa Maria da Feira.

European Parliament (2006), *Draft Report on the proposal of a Council Decision on the conclusion of the Agreement between the European Community and the Russian Federation on the facilitation of issuance of short-stay visas, 2006/0062(CNS)*, Committee on Civil Liberties, Justice and Home Affairs, Brussels.

European Security Strategy (2003), *A Secure Europe in a Better World – The European Security Strategy*, Brussels, 12 December.

Frattini, F. (2006), "The role of internal security in relations between the EU and its neighbours", speech held at the Ministerial Conference, Vienna, 4 May.

Grabbe, H. (2000), *The Sharp Edges of Europe: Security Implications of Extending EU Border Policies Eastwards*, Occasional Paper No. 13, Institute for Security Studies, Paris, March.

Grabbe, H. (2002), "Stabilising the East While Keeping Out the Easterners: Internal and External Security Logics in Conflict", in S. Lavenex and E.M. Ucarer (eds), *Migration and the Externalities of European Integration*, Lanham, MD: Lexington Books.

Hailbronner, K. (1997), "Readmission Agreements and the Obligation of States under Public International Law to Readmit their Own and Foreign Nationals", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, No. 57**,** pp. 1-50.

House of Lords (2000), *Enlargement and EU External Frontier Controls, Seventeenth Report*, Select Committee on European Union, London, 24 October.

Huysmans, J. (2000), "The European Union and the Securitization of Migration", *Journal of Common Market Studies*, No. 38**,** pp. 751-777.

ICG (2005), *EU Visas and the Western Balkans*, Europe Report No. 168, International Crisis Group, Brussels, 29 November.

Jorry, H. (2007), *Construction of a European Institutional Model for Managing Operational Cooperation at the EU's External Borders: Is the FRONTEX Agency a decisive step forward*, CEPS Research Paper No. 6, Challenge Programme Liberty and Security, Centre for European Policy Studies, Brussels, March.

Kruse, I. (2006), "EU Readmission Policy and Its Effects on Transit Countries – The Case of Albania", *European Journal of Migration and Law*, No. 8**,** pp. 115-142.

Landaburu, E. (2006), *From Neighbourhood to Integration Policy. Are there concrete alternatives to enlargement?*, CEPS Policy Brief No. 95, Centre for European Policy Studies, Brussels, March.

Landgren, K. (1999), *Deflecting International Protection by Treaty: Bilateral and Multilateral Accords on Extradition, Readmission and the Inadmissibility of Asylum Requests*, UNHCR, Geneva, June.

Lavenex, S. (2004), "EU external governance in 'wider Europe'", *Journal of European Public Policy*, No. 11**,** pp. 680-700.

Lavenex, S. and W. Wallace (2005), "Justice and Home Affairs", in H. Wallace, W. Wallace and M.A. Pollack (eds), *Policy-Making in the European Union. Fifth Edition*, Oxford: Oxford University Press.

Monar, J. (2001a), "The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs", *Journal of Common Market Studies*, No. 39**,** pp. 747-764.

Monar, J. (2001b), *EU Justice and Home Affairs and the Eastward Enlargement: The Challenge of Diversity and EU Instruments and Strategies*, Discussion Paper C 91, Zentrum für Europäische Integrationsforschung, Bonn.

Noll, G. (1999), *Rejected Asylum Seekers: The Problem of Return*, UNHCR, Geneva, May.

Noutcheva, G. (2007), *Fake, Partial and Imposed Compliance. The Limits of the EU's Normative Power in the Western Balkans*, CEPS Working Document No. 274, Centre for European Policy Studies, Brussels, July.

Prodi, R. (2002), *A Wider Europe – A Proximity Policy as the key to stability*, SPEECH/02/619, Brussels, 5-6 December.

Rehn, O. (2006), *Visa facilitation for Serbia,* Novi Sad, 'Exit' festival, SPEECH/06/441, 6 July.

Rogers, N. and S. Peers (2005), "EC Readmission Agreements", in N. Rogers and S. Peers (eds), *EU Immigration and Asylum Law: Text and Commentary*, Leiden: Martinus Nijhoff.

Scharpf, F.W. (2003), *Problem-Solving Effectiveness and Democratic Accountability in the EU*, MPIfG Working Paper, No. 1.

Schieffer, M. (2003), "Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations", *European Journal of Migration and Law*, No. 5**,** pp. 343-357.

Tassinari, F. (2006), *Variable Geometries. Mapping Ideas, Institutions and Power in the Wider Europe*, CEPS Working Document No. 254, Centre for European Policy Studies, Brussels, November.

Trauner, F. (2007), *EU Justice and Home Affairs Strategy in the Western Balkans. Conflicting Objectives in the Pre-Accession Strategy*, CEPS Working Document No. 259, Centre for European Policy Studies, Brussels, February.

UNHCR (2001), *Inter-State Agreements for the Re-Admission of Third Country Nationals, Including Asylum Seekers, and for the Determination of the State Responsible for Examining the Substance of an Asylum Claim*, UNHCR, Geneva, May.

Vink, M.P. (2002), "Negative and Positive Integration in European Immigration Policies", *European Integration On-Line Papers*, No. 6.

Wichmann, N. (2007), *The Intersection between Justice and Home Affairs and the European Neighbourhood Policy: Taking Stock of the Logic, Objectives and Practices*, CEPS Working Document No. 275, Centre for European Policy Studies, Brussels, October.

Zürn, M. (2000), "Multilevel Governance: On the State and Democracy in Europe", in M. Albert, L. Brock and K.D. Wolf (eds), *Civilizing World Politics. Society and Community Beyond the State*, Lanham et al., Powman & Littlefield Publishers Inc.